

Congress of the United States
Washington, DC 20515

June 8, 2020

Michael Carvajal
Director
Federal Bureau of Prisons
320 First Street, NW
Washington, DC 20534

Dear Director Carvajal:

We write to express our grave concern with the situation at the Federal Correctional Institution, Elkton in Ohio (FCI Elkton). Even though the facility saw a precipitous rise in the number of coronavirus infections, the Bureau of Prisons (BOP) failed to take steps to protect inmates and staff at this facility until it was compelled to do so by a court order. In spite of this court order, the BOP has been slow to institute the necessary reforms to protect individuals at FCI Elkton. Statistics which the BOP reported in a recent court filing indicate that nine inmates have already died, and 446 inmates and seven staff have active coronavirus infections.¹ We urge you to swiftly comply with the court order and act immediately to protect the lives and safety of staff and prisoners at the site. Furthermore, we request that you keep us apprised of your ongoing efforts to accomplish this goal.

As elected officials from Ohio, we have closely monitored the threat posed by COVID-19 in our state. We are deeply troubled by the conditions at FCI Elkton and the implications for both corrections staff and those incarcerated. Inmates at FCI Elkton live in crowded conditions that prevent meaningful social distancing unless the populations of these facilities are significantly reduced through home confinement, transfer, or compassionate release. In his April 22 decision ordering the BOP to quickly move inmates out of FCI Elkton due to unsafe conditions, Judge James Gwin recognized that, “with the shockingly limited available testing and the inability to distance inmates, COVID-19 is going to continue to spread, not only among the inmate population, but also among the staff.”² Unfortunately, according to the most recent statistics, his prediction proved correct. The status report filed with the court on June 4 indicates that, while 1644 of the 2283 individuals incarcerated at FCI Elkton have been tested for the virus and received results, more than 16% of those test results are positive.^{3 4} The rate of infection is shocking.

¹ The June 4, 2020 Status Report which was filed by BOP in Federal District Court indicates that the true number of cases, 305, is different than the figures shown on their website, which indicates 446 active cases. *Compare* Federal Bureau of Prisons: COVID-19 Cases, BUREAU OF PRISONS, <https://www.bop.gov/coronavirus/> (last visited June 8, 2020); Respondents’ Status Report, Wilson v. Williams, No. 4:20-CV-00794, 2020 WL 1940882 (N.D. Ohio June 4, 2020). Given that the BOP’s website shows there are more 140 additional cases than BOP has reported to the Court, the true rate of infection is likely much higher than 16%.

² Wilson v. Williams, No. 4:20-CV-00794, 2020 WL 1940882 (N.D. Ohio Apr. 22, 2020)

³ Respondents’ Status Report, Wilson v. Williams, No. 4:20-CV-00794, 2020 WL 1940882 (N.D. Ohio June 4, 2020)

⁴ Id.

Even more disturbing is BOP's indifference to the needs of the most vulnerable populations at FCI Elkton. Status reports filed by BOP with the court reveal BOP's lack of testing, poor understanding of the size and scope of the vulnerable population at the facility, and unwillingness to take steps necessary to protect those populations.⁵ On May 19, in a follow up to his April 22 order, Judge Gwin decried BOP's failure to make significant progress at FCI Elkton and specifically noted that BOP has "made only minimal effort[s] to get [those designated as] at-risk inmates out of harm's way".^{6 7}

Given the high rate of infections among tested prisoners, we first ask that BOP use all the tools available to protect those incarcerated and working at FCI Elkton. The CARES Act provided significant discretion to the Attorney General and to BOP to manage facilities across the nation. Subsequently, on April 3, 2020, the Attorney General directed BOP to maximize home confinement for prisoners at FCI Elkton.⁸ Unfortunately, we can discern no substantial efforts to utilize this authority at FCI Elkton.

Furthermore, we request you provide us with the following information, along with regular status reports, so we might be able to better monitor the BOP's efforts to protect corrections officers and those incarcerated at FCI Elkton. Thank you for your prompt attention to these requests.

- 1) How many inmates were at the FCI Elkton facility on March 1, 2020, and how many still remain as of the date of your reply? Please indicate the dates of release/transfer.
- 2) How many at-risk inmates were at the facility on March 1, 2020, and how many still remain as of the date of your reply? Please indicate the dates of release/transfer.⁹
- 3) Please provide race and other demographic data for the at-risk and general prison population at the facility?
- 4) How many inmates in the facility were eligible for either compassionate release or home confinement release on March 1, 2020, and how many are eligible as of the date of your reply?
- 5) How many at-risk inmates at the FCI Elkton facility were eligible for compassionate release or home confinement on March 1, 2020 and how many are eligible as of the date of your reply?

⁵ Id.

⁶ Wilson v. Williams, No. 4:20-CV-00794, 2020 WL 1940882 (N.D. Ohio Apr. 22, 2020), enforcement granted, No. 4:20-CV-00794, 2020 WL 2542131 (N.D. Ohio May 19, 2020).

⁷ Id. At 10. The order also requests additional information regarding the actual size of the vulnerable population, as BOP used search criteria to establish this population size which may have excluded prisoners that are over 65 or that have medical conditions related to obesity.

⁸ Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, §12003, 237-237 (2020); *Attorney General William P. Barr, Memorandum for Director of Bureau of Prisons, Re: Increasing Use of Home Confinement at Institutions Most Affected by COVID-19*, Office of the Attorney General (Apr. 3, 2020) https://www.bop.gov/coronavirus/docs/bop_memo_home_confinement_april3.pdf

⁹ We note that Judge Gwin defined the at-risk population to include at least 837 inmates at Elkton FCI, but that this count was potentially underinclusive of those over 65 and those at a higher risk for COVID-19-related medical complications due to obesity. No. 4:20-CV-00794, 2020 WL 2542131 at 10 (N.D. Ohio May 19, 2020).

- 6) Of the number of inmates at the FCI Elkton facility on March 1, 2020, how many became eligible for release under the expanded CARES Act home confinement eligibility?
- 7) How many inmates at the FCI Elkton facility have in fact been released under either the compassionate release or home confinement programs since March 1, 2020? Please indicate the dates of release.
- 8) How many inmates are currently in isolation at FCI Elkton?
- 9) How many doctors are on staff at FCI Elkton and what are their hours per week?
- 10) Please specify what additional policies you have put in place to ensure personal protective equipment (PPE) is available to each and every prison guard or front-line employee at FCI Elkton.
- 11) How regularly is the PPE for prison guards or others with direct contact with prisoners replaced or sanitized?
- 12) What changes have you made to the staffing rotations and training, and what other procedures have been put into place to ensure employees are protected from COVID-19?
- 13) Have you made administrative leave available to prison guards that have unplanned childcare needs? Please specify what additional policies you have implemented.
- 14) Have you made paid sick leave, including the additional 2 weeks of emergency paid sick leave provided in the CARES Act, available to prison guards or other prison staff, who have been exposed to, are experiencing symptom of, have contracted, or are caring for a dependent under quarantine due to, COVID-19?
- 15) What other steps have you taken to implement social distancing procedures for officers and employees at FCI Elkton?

Sincerely,



Sherrod Brown
United States Senator



Marcy Kaptur
Member of Congress

A handwritten signature in blue ink that reads "Marcia L. Fudge". The signature is written in a cursive style with a large initial 'M' and 'F'.

Marcia L. Fudge
Member of Congress

A handwritten signature in black ink that reads "Tim Ryan". The signature is written in a cursive style with a large initial 'T' and 'R'.

Tim Ryan
Member of Congress